In the Supreme Court of the United States

October Term, 1950

No. 298

[illegible]

v.

[illegible]

No. 299

[illegible]

v.

[illegible]

No. 314

[illegible]

v.

[illegible]

No. 315

[illegible]

v.

[illegible]

No. 324

[illegible]

v.

[illegible]

J. HOWARD McGRATH, Attorney General, et al., Petitioners in the
Most Properly Cognizable

On Petitions for Writs of Certiorari to the United States
Court of Appeals for the Second Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

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No. 298

LEO ZITTMAN (with whom The Chase National Bank of the City of New York was impleaded below), Petitioner,

v.

J. HOWARD McGRATH, Attorney General, as Successor to the Alien Property Custodian

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No. 299

LEO ZITTMAN (with whom the Federal Reserve Bank of New York was impleaded below), Petitioner,

v.

J. HOWARD McGRATH, Attorney General, as Successor to the Alien Property Custodian

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No. 314

JOHN F. McCARTHY (with whom The Chase National Bank of the City of New York was impleaded below), Petitioner,

v.

J. HOWARD McGRATH, Attorney General, as Successor to the Alien Property Custodian

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No. 315

JOHN F. McCARTHY (with whom the Federal Reserve Bank of New York was impleaded below), Petitioner,

v.

J. HOWARD McGRATH, Attorney General, as Successor to the Alien Property Custodian

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No. 324

JOHN J. McCLOSKEY, as Sheriff of the City of New York (with whom The Chase National Bank of the City of New York, Leo Zittman, and John F. McCarthy were impleaded below), and as Sheriff of the City of New York (with whom the Federal Reserve Bank of New York, Leo Zittman, and John F. McCarthy were impleaded below), Petitioner,

v.

J. HOWARD McGRATH, Attorney General, as Successor to the Alien Property Custodian

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On Petitions for Writs of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (I R 97-102)[1], is reported at 82 F. Supp. 740. The per curiam opinion of the Court of Appeals for the Second Circuit (II R 99-100) is reported at 182 F. 2d 349.

JURISDICTION

The judgments of the Court of Appeals were entered on June 2, 1950 (II R 100-101). Petitions for rehearing were filed on June 16, 1950 (II R 102-120), and denied on June 27, 1950 (II R 121-122). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

These proceedings were instituted by the respondent to obtain a declaration that he is entitled, under vesting orders issued by the Alien Property Custodian, to the entire balances remaining in certain bank accounts maintained by German nationals (the Deutsche Reichsbank and the Deutsche Golddiskontbank) with the Chase National Bank of New York and the Federal Reserve Bank of New York. Respondent also sought a declaration that federal foreign funds control or "freezing" regulations had prevented two attaching creditors, petitioners Leo Zittman and John F.

[1] Petitioners in these companion cases have filed the Record in two Parts. Part I is designated herein as I R and Part II as II R.

McCarthy, and petitioner John J. McCloskey, as Sheriff of the City of New York, from obtaining liens upon or other property interests in the accounts by means of writs of attachment obtained in the courts of New York subsequent to the freeze date. The following questions are presented:

1. Whether the court below erred in holding that, absent a license, no interest in blocked property could pass under a post-freezing attachment.

2. Whether the court below erred in holding that the Secretary of the Treasury did not in fact grant a general license authorizing the acquisition of interests in blocked property by means of attachments.

3. Whether the court below erred in holding that the federal court was a proper forum for determining respondent's rights.

STATUTES, EXECUTIVE ORDERS, AND REGULATIONS INVOLVED

The pertinent statutory provisions and orders and regulations issued thereunder are set forth in the Appendix, *infra*, pp. 40-73.

STATEMENT

The petitions before the Court arise out of two actions brought by the respondent, as successor to the Alien Property Custodian,[2] pursuant to Sec-

[2] By Executive Order No. 9788 (October 14, 1946, 11 F. R. 11981) the Attorney General succeeded to the powers and

tion 17 of the Trading With the Enemy Act and the Federal Declaratory Judgment Act. One action was brought against the Chase National Bank of the City of New York and petitioners Zittman, McCarthy and McCloskey (I R 3-30). The other was filed against the Federal Reserve Bank of New York and the same three petitioners (II R 3-30). The facts upon which the cases were submitted appear from the pleadings (I R 3-83; II R 3-72) as supplemented by stipulations between the parties (I R 84-96; II R 73-82).

By vesting orders executed in October 1946 the Custodian vested the obligations arising out of certain dollar accounts maintained by the Deutsche Reichsbank and the Deutsche Golddiskontbank with the Chase and Federal Reserve Banks in New York, including all rights to demand, enforce and collect the same[3] (I R 13-15, 19-21; II R 12-14). The vesting order addressed to the obligation of the Federal Reserve Bank was implemented, the same month, by a turn-over directive which found that the principal amount of $1,003,382.78 constituted "property that was vested * * * by the said vesting order" and demanded that this sum, together with all accumulations thereon, be surrendered

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duties of the Alien Property Custodian. In this brief the terms "Alien Property Custodian" or "Custodian" will be used, as the context may require, to refer either to the Alien Property Custodian or the Attorney General as his successor.

[3] The Custodian's vesting authority rests upon Section 5(b) of the Trading With the Enemy Act and Executive Order No. 9193 (July 6, 1942, 7 F. R. 5205).

forthwith to the Custodian (II R 20-22). No turn-over directive was addressed to Chase[4] but the vesting orders pertaining to its obligations were served upon it with a demand for compliance (I R 16-18, 22-24).

Federal Reserve complied with the Custodian's turn-over directive to the extent of remitting $703,382.78. It retained $300,000 in its Reichsbank account, however, on the ground that it was required to do so by writs of attachment which had been served upon it (II R 25-30). Chase declined to surrender any of the property embraced by the Custodian's orders, asserting that it had been served with writs attaching its Reichsbank and Golddiskontbank accounts (I R 25-30). Both banks expressed readiness to comply in full with the Custodian's vesting orders if the writs of attachment which had been served upon them were vacated (I R 28, 30; II R 26).

The writs involved were procured by the petitioners Zittman and McCarthy in actions which they commenced against the Deutsche Reichsbank and the Deutsche Golddiskontbank in the Supreme Court of New York, Kings County, on December 11, 1941, and January 20, 1942[5] (I R 56,

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[4] This is the only particular in which there is a significant difference between the two cases.

[5] This was more than six months *after* freezing controls were applied to German-owned property located in this country. Executive Order No. 8389 (April 10, 1940, 5 F. R. 1400) as amended by Executive Order No. 8785 (June 14, 1941, 6 F. R. 2897).

66; II R 52, 64). Default judgments were subsequently entered in those actions following service by publication (I R 58, 68; II R 52, 65-66). Petitioners never obtained a license from the Treasury authorizing them to acquire interests in the bank accounts in question or to satisfy their judgments out of them (I R 7-8, 11-12, 55, 65; II R 6-7, 10-11, 52, 63).[6] Accordingly, there has been no execution on the judgments (I R 7-8, 55, 66; II R 6-7, 52, 63).

It was stipulated by the parties that the Treasury Department, in administering the freezing controls, advised persons who made inquiry concerning the possibility of securing adjudication of their rights *vis-a-vis* owners of blocked property, that the regulations did not in any way forbid the bringing of suits in the courts or the resort to judicial process (including writs of attachment), but that a license was required before a judgment obtained in any suit could be satisfied out of blocked property. It was also stipulated that on various occasions the Treasury has specifically licensed payments from blocked accounts in satisfaction of judgments obtained against blocked nationals in suits instituted by attachment. (I R 84-96; II R 73-82.)

Petitioners Zittman and McCarthy contested respondent's claim that he is entitled to the money held in the accounts, on the ground that their at-

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[6] Petitioner McCarthy filed applications for licenses which were denied (I R 12, 55; II R 11, 53).

tachments gave them antecedent property rights in those accounts superior to those which the Custodian took under his vesting orders (I R 61, 70; II R 58, 68). Petitioner McCloskey adopted these contentions and also urged that, if the court should find respondent entitled to the property in issue, it should nonetheless provide for payment to him of poundage fees (I R 74; II R 72).

The District Court held that all German-owned property having a situs in this country was effectively frozen on June 14, 1941; that "judicial process cannot, without a license or other authorization from the Secretary [of the Treasury], create any interest in blocked property"; and that no such authorization was in fact granted. It also held that the Sheriff's claim for poundage necessarily fails because no interest in the blocked property passed under the attachments. It accordingly declared respondent entitled to the entire balances remaining in the vested accounts (I R 97-102).

The Court of Appeals affirmed as to petitioners Zittman and McCarthy on the authority of *Propper v. Clark*, 337 U. S. 472, and as to petitioner McCloskey on the ground stated by the District Judge (II R 99-100).

After decision by this Court in the case of *Singer* v. *Yokohama Specie Bank*, 339 U. S. 841, petitioners applied for a rehearing. Their applications were denied (II R 121-122).

ARGUMENT

As the court below held, the decision in this case is controlled by *Propper* v. *Clark*, 337 U. S. 472. That case and this involve the general question whether a creditor could, without appropriate federal authorization, acquire rights in blocked assets which could prevail against a subsequent vesting by the Alien Property Custodian of the interest of the enemy debtor in those assets. In *Propper*, where the creditor proceeded by receivership, this Court held he could not prevail. The logic of that decision also required the holding below that he could not prevail where he proceeded by attachment. The *Propper* case also established that certain general rulings and regulations of the federal authorities could not be regarded as authorizing the acquisition of such rights; the further question of fact presented in the instant case as to whether certain informal communications by the Secretary of the Treasury amounted to an authorization permitting the acquisition of rights *in rem* by unlicensed attachment was correctly decided by the court below. The *Propper* case is also dispositive of the question whether the federal courts properly exercised jurisdiction to render a declaration of rights. The decision below is not in conflict with any decision of this Court or of a federal court of appeals. The practical importance of the questions presented is confined almost entirely to the State of New York; hence the decision below has

effectively disposed of the problem, and there is no necessity for further review.[7]

I

Executive Order No. 8389, as amended,[7a] provides:

> SECTION 1. All of the following transactions are *prohibited*, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise if * * * such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:
>
> A. All transfers of credit between any banking institutions within the United States * * *;
>
> B. All payments by or to any banking institution within the United States;
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> * * * * * *

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[7] Although we believe the issues here raised were disposed of in the *Propper* case, we have, because of the vigor and length with which they have been presented by the various petitioners herein, thought it advisable to answer in some detail the contentions advanced. In so doing, we have felt that it would better serve this Court's convenience to repeat, where necessary, some of what we said in *Propper*, rather than require reference back to the *Propper* brief for a full understanding of our position.

[7a] The President's authority to issue the Order rests upon Section 5(b) of the Trading With the Enemy Act, as amended by the Joint Resolution of May 7, 1940 (54 Stat. 179), and as further amended by the First War Powers Act of 1941, Section 301 (55 Stat. 839).

E. All *transfers,* withdrawals, or exportations of, *or dealings in,* any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions. [Italics added.][8]

The Order became effective as to German property in this country as of June 14, 1941 (Executive Order No. 8785, 6 F. R. 2897). Petitioners recognize that they cannot be paid out of the blocked accounts without a license, but nonetheless contend that the Order did not prevent them from acquiring an indefeasible interest in the blocked property by means of their attachments. Section 1E of the Order makes it plain, however, that its prohibitions were direct l not merely against payments out of blocked funds but against any transfer of interest in blocked property. The proscription is against "all transfers, * * * or dealings in, any evidences of indebtedness or evidences of ownership of property." Whether the blocked accounts here involved be considered as trust funds for the benefit of the Reichsbank and the Golddiskontbank or whether only the usual debtor-creditor relationship was created by the deposits, it is plain that the accounts fall within the

[8] There is no dispute that the Reichsbank and the Golddiskontbank are banks organized under the laws of Germany and are nationals within the ambit of the Order.

description "evidences of indebtedness or evidences of ownership of property." Any attempts, therefore, by the petitioners to acquire an interest in the accounts by the writs of attachment necessarily constituted acts of "transfer" or "dealing in" such evidences of indebtedness or ownership and required a license.

Petitioners stress that nothing in the Trading With the Enemy Act or in the freezing regulations prohibits the bringing of suits against enemy nationals in time of war. This is correct. Indeed, the Treasury Department in administering the controls took the position from the outset that parties were free to seek adjudications of their rights *vis-a-vis* blocked nationals. This does not alter the fact, however, that transfers of interests in property subject to the controls may not be effected without a license and that it is immaterial whether the attempted transfer is by voluntary assignment or by means of judicial process. That the prohibitions go to both categories of transfers was squarely decided by this Court in *Propper* v. *Clark, supra.* The court below was clearly correct in holding that decision dispositive of the present litigation.[9]

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[9] We believe that there is an additional ground for upholding the respondent's position in the cases involving the Federal Reserve accounts. Since the Act does not specify that the Custodian's findings must take a particular form, the turnover directive addressed to Federal Reserve, finding that a specific sum was enemy property, must be read in conjunction with the vesting order in determining what the Custodian proposed to seize. *In re Yokohama Specie Bank, Ltd.*, 188 Misc. 137,

In *Propper*, the Custodian sought a declaration that he was entitled under a vesting order to funds held by an American Society (ASCAP) for an Austrian national. He also sought a declaration that a permanent receiver appointed subsequent to freezing by a New York court pursuant to a New York judgment, for the purpose of receiving and reducing to possession the local assets of the Austrian national, acquired no interest in the blocked property held by ASCAP in the absence of a federal license. It was conceded that, had there been no freezing controls in effect, the permanent receiver would have taken title to the property.

The parallel between *Propper* and the instant cases is obvious. In both, New York claimants, proceeding under New York law, sought to realize on the local assets of enemy nationals. In both, they availed themselves of provisional remedies and obtained default judgments in proceedings grounded on substituted service. In both, they

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141, 66 N. Y. S. 2d 289, 293. So read, it is apparent that the Custodian did not vest an indeterminate interest in the Federal Reserve accounts, leaving open for judicial determination the *quantum* of that interest, but rather vested a specific *res*. Where he vests a described *res*, the Custodian is clearly entitled to immediate possession (*Silesian-American Corp.* v. *Clark*, 332 U. S. 469; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51; *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554) and the only remedy of a non-enemy claiming an interest in the property is by suit under Section 9(a) (*ibid.*). Since the court below quite correctly determined, however, that these petitioners could not have acquired any interest in either the Chase or Federal Reserve accounts because of the impact of freezing, it became unnecessary to consider the difference between the character of the vestings in the two cases.

contended that New York's judicial process had given them an interest in the property itself which prevented the Custodian from taking it under a vesting order. And in both the process upon which they relied had been issued after the freeze date and without a federal license. In *Propper*, as here, it was contended by the petitioner that the freezing prohibitions did not prevent transfer of an interest in the property, but only purported to screen *payments* by means of a licensing system. This argument was flatly rejected by the Court of Appeals for the Second Circuit, which stated [169 F. 2d 324, 327]:

> The language of Exec. Order 8389 prohibits the unlicensed transfer of an enemy alien's property. There is no cogent reason for excepting transfers by judicial process. To allow the exception would be to furnish a means of evasion by which the impact of freezing controls could be avoided by recourse to judicial proceedings. Such would negate the executive and legislative intention.

Affirming that decision, this Court declared [337 U. S. at pp. 480, 486]:

> The Executive Order of June 14, 1941 * * * specified the prohibited transactions * * * by categories so all-inclusive as to make it clear that the purpose was to require transactions involving property of nationals of designated foreign countries to be carried out under regulations of this Government, except certain

transactions such as are provided for in General Ruling No. 12, April 21, 1942, 7 Fed. Reg. 2991. * * *

* * * * * * * * * * *

It is our conclusion that the Joint Resolution of May 7, 1940, and the Executive Order of April 10, 1940, put into effect a valid plan for control of the property covered by the regulation that prohibited any change of title to that property by reason of the subsequent appointment of petitioner as permanent receiver. We do not now undertake to say whether every determination of rights concerning blocked property in unlicensed litigation is voidable. We base our determination on the purpose of Congress to prevent shifts in title to blocked assets and the prohibition of the Executive Order against transfers of such a credit as this. The language of the order prohibits more than payment. It prohibits transfers of credit. * * *

Petitioners urge that *Propper* is distinguishable because the immediate question there was whether title to the blocked property could shift to the receiver. An attaching creditor, they argue, obtains a lien or security interest in the property, but does not acquire the title until the lien is satisfied (see Br. in No. 298, pp. 51-52, Br. in No. 314, pp. 27-28). Granting this to be so, the attempted distinction is nevertheless without substance. On the face of it, it is little short of absurd to suggest that, while

creditors of an enemy national are precluded from reaching his blocked property in the absence of a license where they proceed by securing the appointment of a receiver, the opposite result will be permitted where they follow the parallel avenue of attachment. Certainly there is nothing in the language of the freeze order, in the purposes of the controls or in the rationale of the *Propper* decision that would countenance such a paradoxical result.

As emphasized above, the freeze order "prohibits more than payment"; it prohibits all unlicensed "transfers * * * or dealings in" blocked property. And to hold that one could transfer valuable rights in blocked property so long as title did not pass—that one could remove the meat so long as the shell remained—would ignore the plain mandate of the Order.

It would also, of course, defeat the basic purposes of the controls. A primary objective of freezing was to prevent the Axis countries from drawing sustenance from property within the jurisdiction of the United States. (Cf. *Propper* v. *Clark*, *supra*, at p. 481.) It was recognized that if only payments out of blocked property were proscribed it would be a simple matter for the aggressor nations to sell interests in blocked property (either those of their own nationals or those owned by nationals of the invaded countries) to friendly speculators willing to buy at a discount and to await payment on the ultimate day of unblocking. See 86 Cong. Rec. 5006-08, 5168-83; H. Rep. 1507, 77th

Cong., 1st Sess., p. 3; S. Rep. 911, 77th Cong., 1st Sess., p. 2.

To hold that *any* interest in blocked property may pass without a license would frustrate the objective. The possibility of assigning interests by attachments furnishes one illustration. Let us suppose the case of a German national who had a million dollars in New York at the time the freeze went into effect. If a non-enemy speculator could acquire an indefeasible lien on that property by the simple expedient of filing a complaint, fictitious or otherwise, procuring a writ of attachment, and then obtained a default or confessed judgment, can it be doubted that he might be willing to pay the German handsomely with "free" money for the privilege?[10] Yet, that was the very kind of transaction freezing was designed to make unprofitable.

A second, closely related, objective of the program was to preserve blocked property for possible future vesting, to keep it intact "until the Government could determine whether those assets were needed for prosecution of the threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected." *Propper* v. *Clark, supra,* at p. 484. Petitioners state that in *Propper* the Court was ad-

[10] This illustration is designed to show the dangers to the freezing program implicit in petitioners' theory. No implication is intended that there was any impropriety in connection with the actions which these petitioners brought against the Reichsbank and the Golddiskontbank.

dressing itself to transfers of title. It is true that that was the kind of transfer there presented. It can scarcely be supposed, however, that transfers of lesser property interests stand on any different footing and that this case is to be regarded as different because the lien asserted has not yet ripened into title. Indeed the Court spoke, more generally, of "transfers of credit" as prohibited (p. 486). It is unmistakably plain that to allow the creation of an indefeasible lien on blocked property would frustrate *pro tanto* the purpose of preserving it for possible future vesting, just as effectively as would an unauthorized transfer of title. This case proves the point. These petitioners are seeking to resist the claim of the Custodian to take property that was admittedly enemy-owned on June 14, 1941, and they rely solely on liens which they claim to have acquired subsequent to that date and which they assert to be indefeasible.

Still another purpose in preventing unlicensed transfers of enemy property was the protection of *all* United States citizens having claims against enemy nationals. The importance of this aspect of freezing was recognized at an early date. When the Congress ratified Executive Order No. 8389 in April 1940, Senator Barkley stated (86 Cong. Rec. 5006):

> It should also be stated—and I am sure the Senator [Wagner] omitted it by oversight—that the joint resolution is intended not only

> to protect the nationals of Norway and Denmark who have interest in stocks, securities, and other property in the United States, but it is also intended to protect American citizens in the event they have claims of any sort growing out of these transactions, and therefore we preserve the property not only for its owners but for the benefit of Americans who may have claims.

It was also emphasized in *Propper* that one of the objectives in immobilizing enemy property had been to hold it available for future compensation of "our citizens or ourselves" (337 U. S. at p. 484).

This objective was carefully implemented in 1946 by the addition to the Trading With the Enemy Act of Section 34, which establishes a complete scheme for the satisfaction of persons to whom the former owners of vested property were indebted. That Section provides that vested property held by the Custodian shall be "equitably applied" to debts owed by the pre-vesting owner (§ 34(a)). It further declares that no debt claim is to be allowed "if it arose from any action or transaction prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto * * *." While the Section provides for certain priorities (§ 34(g)); e.g. wage and salary claims, it grants none to persons who obtained unlicensed writs of attachment against the property later vested. In cases where the aggregate of valid debt claims

against a particular debtor exceeds his vested assets, the Custodian is directed to make a *pro rata* allocation (§ 34(f)). To interpret Executive Order No. 8389, therefore, as permitting a transfer of property to one creditor by unlicensed attachment or judgment would be a manifest contradiction of the fixed intent of Congress to treat all creditors alike.[11]

Apparently recognizing that there is no real distinction to be drawn between the instant case and *Propper*, petitioners argue that the court below erred "in choosing *Propper* v. *Clark* * * * as its guide" instead of the decision in *Lyon* v. *Singer*, 339 U. S. 841 (see e.g. Br. in No. 298, p. 18). As this Court explicitly pointed out, however, in its opinion in *Singer*, there is no disparity in the results reached in those two cases. Indeed, it was only because this Court found the New York Court of Appeals' holding in *Singer* consistent with *Propper* and with the purposes of the freezing and vesting programs that it affirmed the judgment in that case. While the New York Court of Appeals' opinion is not free from ambiguity, this Court's decision is clear. It stands as a reaffirmation of the doctrine of the *Propper* case.

The question in *Singer* was whether a claimant was entitled under the New York Banking Law

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[11] Of course, where it is clear that the assets are more than sufficient to pay all creditors the force of these considerations may disappear. Accordingly, in some instances, transfers to creditors of blocked nationals have been licensed.

to status as a preferred creditor with respect to the assets of a Japanese corporation held by the New York Superintendant of Banks as a statutory liquidator. The transactions with the Japanese corporation upon which the claim of preference was based had been concluded after freezing. This Court construed the decision of the New York Court of Appeals (which it affirmed) as holding that under New York law "the transactions gave rise to a preferred claim in the liquidation, but that payment by the liquidator must await specific licensing by the Alien Property Custodian of the *transactions underlying the claims*" (italics added), *Lyon* v. *Singer, supra,* at p. 842. The opinion thus reaffirms the principle that not only payment but the "underlying transactions" require a license before they can take effect. This is given added point by the statement which followed (pp. 842-843):

> Our decision in *Propper* v. *Clark*, 337 U. S. 472, does not require a contrary conclusion. There the liquidator claimed title to frozen assets adversely to the Custodian, and sought to deny the Custodian's paramount power to vest the alien property in the United States. No such result follows from the New York court's judgments in the present cases.

Petitioners state that the Custodian did not vest the *res* in the instant cases (which is true so far as

the Chase accounts are concerned[12]) and argue that the vesting power is, therefore, not in issue (see Br. in No. 298, pp. 18-19, 52-53, Br. in No. 314, p. 30). It is true that where the Custodian vests the enemy interest in designated property and leaves open for judicial determination the existence of any adverse interest in that property (which is the exact course that was followed in *Propper*[13]), the power to take immediate possession by summary seizure is not in issue. But there is no question that in a proceeding brought to enforce an "interest" vesting, the Custodian is entitled to take the total enemy interest as determined by the court. As held in *Propper*, that means the total enemy interest as it existed on the date of freezing, save to the extent that subsequent transfers were licensed. The reach of the Custodian's vesting is in issue here in exactly the same way as it was in *Propper*. And to accord him anything less than the total enemy interest as it stood on the freeze date would, in the words of this Court, "deny the * * * paramount power to vest * * * alien property in the United States."

II

Petitioners also argue that, whatever the scope

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[12] With reference to the Federal Reserve accounts, see note 9, *supra*.

[13] The vesting order involved in *Propper* (No. 2097, 8 F. R. 16463) was of the "right, title and interest" variety. And the Custodian there sought a declaration from the court that the receiver had no "right, title or interest in the claim in question," 337 U. S. at p. 475.

of the Executive Order, the Secretary of the Treasury relieved them from the effect of its prohibitions and authorized the acquisition of the property interests to which they lay claim. They concede that no specific license was granted them but suggest that a general authorization is to be inferred. The court below found that no authorization was in fact granted, a determination which we believe to be clearly correct.

Petitioners point to the fact that suits against blocked nationals were not prohibited by the terms of the Act or the freezing regulations issued thereunder. They also stress respondent's stipulation to the effect that Treasury had written letters advising prospective litigants that no license was required to institute suit or to secure the issuance of a writ of attachment or other judicial process. Petitioners contend that these statements must be read as implying a general authorization to acquire interests in blocked property without a license.

Derogations from the broad prohibitions of a law are not to be inferred in the absence of a clear expression of intent to create the exception. *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500, 518-519; *Spokane & Inland R. R.* v. *United States*, 241 U. S. 344, 350. If the Treasury had intended to create a general exception whereby interests in blocked property might be transferred by resort to attachments or other judicial process, presumably it would have followed its regular practice of issuing a General License and publishing it in the Federal

Register and in the Code of Federal Regulations.[14] It did no such thing. On the contrary, every public pronouncement which the Treasury has made on the subject emphasizes that interests in blocked property may *not* be transferred by means of attachments unless a license is granted.

On April 21, 1942, the Secretary announced General Ruling No. 12, 7 F. R. 2991, which provides in part:

> (1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of the Order [Executive Order No. 8389] is *null and void* to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer;
>
> * * * * * * * *
>
> (5) For the purposes of this general ruling:
>
> (a) The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the

[14] Ninety-seven such licenses have been published to date. See Code of Federal Regulations, 1949 ed., Title 8, c. II § 511.

foregoing shall include the * * * *creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution* or other judicial or administrative process or order, or the service of any garnishment; * * * [Italics added]

In Press Release No. 34, *U. S. Treasury Dept., Documents Pertaining to Foreign Funds Control* (1946), pp. 71-73 (App. pp. 65, 73), accompanying General Ruling No. 12 the Secretary pointed out:

> *Unlicensed transfers of blocked assets always have been void and unenforceable under the freezing orders* and * * * [General Ruling No. 12] serves the purpose of emphasizing this fact for the benefit of any of the public who may have overlooked this aspect of freezing control. * * * The term "transfer" is given a very comprehensive meaning, excepting only certain types of transfers by operation of law (e.g., transfer by intestate succession). [Italics added]"

[15] While General Ruling No. 12 was published subsequent to the time that the writs of attachment here involved were issued, that Ruling is a statement of the Treasury position as adopted from the inception of freezing. In *Propper*, also, the petitioner's appointment as permanent receiver antedated publication of the Ruling. The Ruling was declared "useful" as a statement of the position taken in the administration of the controls. 337 U. S. at pp. 485-486.

The provisions of paragraph 4 of General Ruling No. 12 did not alter this prohibition against the transfer of interests by attachments, levies, or other judicial process. Paragraph 4 reads:

> (4) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated: *Provided, however,* That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license.

The proviso distinctly states that no judicial process shall confer or create a greater interest in any property in a blocked account than the owner of the property could create or confer by voluntary act without a license. Obviously under the other provisions of Executive Order No. 8389 and General Ruling No. 12 an attempted voluntary assignment by the Reichsbank or the Golddiskontbank would have been ineffective to pass any inter-

est in the blocked property. In short, while paragraph 4 makes it plain that the Treasury did not impose an absolute prohibition on litigation relating to blocked property or on the use of such property as a basis for the exercise of jurisdiction over its nonresident owner, it also clearly specifies the limits beyond which the courts might not go. The paragraph is clearly *not* a consent to the acquisition, as the result of judicial action, of any interest in blocked property. It permits judicial action only to the extent that such action is possible without transferring an interest in blocked property, or otherwise effectuating a transaction prohibited by the Order. The press release contemporaneously issued (Press Release No. 34, *supra*) emphasizes the same point:

> Paragraph (4) is but a formal statement of the position which the Treasury Department has always taken on litigation (including attachments) affecting blocked assets. The Treasury has no desire to limit the bringing of suits in courts within the United States: *Provided*, That no greater interest is created by virtue of the attachment, judgment, etc., than the owner of the blocked account could have voluntarily conferred without a license. Thus, the Treasury does not want to interfere with the orderly consideration of cases by the courts provided that the results of court proceedings are subject to the same policy con-

sideration from the point of view of freezing control as those arising through voluntary action of the parties.

The limited effect of paragraph 4 of General Ruling No. 12 was again reaffirmed in unmistakable terms by the Treasury Department in Public Circular No. 31, issued on August 2, 1946, 11 F. R. 8351:

* * * * * * * * * *

(3) An attachment is a "transfer." See paragraph (5) of General Ruling No. 12, where the term "transfer" is defined as including "the issuance, docketing, filing, or other levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment." *An unlicensed attachment, therefore, cannot operate to transfer or create any interest in blocked property.* Nor can it serve as a basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(4) Paragraph (4) of General Ruling No. 12 does not constitute a license authorizing the seizure or creation of any interest in blocked property by attachment proceedings or other legal process. This paragraph merely is a formal statement of the position which the

Treasury Department has always taken with respect to litigation affecting blocked property—that it does not desire to interfere with such litigation so long as it is clearly understood that the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property. Thus the proviso of paragraph (4) specifies that "no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license." In issuing paragraph (4), the Treasury Department did not undertake to decide for the courts whether they should exercise jurisdiction. It *simply prescribed that jurisdiction could be exercised only on the basis that if a Treasury license was not issued, the judicial process could not operate to transfer or create any interest in blocked property, nor could it be the basis for the assertion or recognition of any other right, remedy, power, or privilege with respect to the property.* [Italics added]

Whether the courts of a particular state will permit jurisdiction over an absent defendant to be

founded on such a limited control by its officers of the defendant's property, or whether a court will initially entertain proceedings in which it is powerless to render an unrestricted judgment against blocked funds, are questions which fall outside this case. The only issue here is whether petitioners acquired any lien upon, or interest in, the particular accounts. In the face of Executive Order No. 8389 and General Ruling No. 12, it is manifest that they could acquire no such interest after June 14, 1941, in the absence of a Treasury license.[16]

Petitioners seek comfort from the fact that in the case of *Commission for Polish Relief Ltd.* v. *Banca Nationala a Rumaniei,* 228 N. Y. 332, 43

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[16] Of the cases cited by petitioners, the only one which supports their contention to the contrary is *Sun Insurance Office, Ltd.* v. *Arauca Fund,* 84 F. Supp. 516 (S. D. Fla.). The court stated in that case:

"• • • the libelant herein had a valid attachment lien on the vessel by virtue of its attachment of July 12, 1941, notwithstanding the fact that no license authorizing said attachment was secured from the Secretary of the Treasury under the provisions of Executive Order 8389. No license or permit under said Executive Order was required to validate libelant's attachment lien." [pp. 518-519]

Nothing on this point appears in the opinion beyond the bare statement quoted above. There is no discussion or analysis whatever of the controls or of their purpose and there is no way of ascertaining how the court arrived at its conclusion. In the face of the language of the Order and the regulations, and this Court's definitive decision in *Propper,* the conclusion is believed untenable. The decision in *Sun Insurance* was not appealed by the Custodian because the court held on other grounds that the libelant was not entitled to a recovery.

N. E. 2d 345, the Treasury, appearing as *amicus curiae*, advised the New York Court of Appeals that it believed jurisdiction might be exercised on the basis of a writ of attachment directed against a nonresident's blocked property (Br. in No. 298, pp. 11-12, Br. in No. 314, pp. 11-12). But while petitioners repeatedly emphasize this aspect of the Treasury's position, they are prone to overlook, throughout their arguments, the limiting condition: That no interest in the property might pass unless and until a license was obtained. The Government's brief in the *Polish Relief* case stated:

> An attachment action against a national's blocked account is an attempt to obtain an unlicensed assignment of the national's interest in the blocked account—nothing more and nothing less.
>
> In this sense, the attachment action might be regarded as a levy upon the national's contingent power (i.e. contingent upon Treasury authorization) to transfer all his interest in the blocked account to A; any judgment in the attachment action resulting in giving A a contingent interest in the account equivalent to what he would have obtained by voluntary assignment.
>
> The value of such an interest is of course problematical. Whether it is worthless or worth full value will depend upon whether the transfer sought is in accordance with the Gov-

ernment's policies in administering freezing control.

Under this analysis of what the nature of any attachment action against a blocked account must be, in the light of the purposes of freezing control, it is suggested that an attachment action of this nature might well be allowed in the New York courts.

The fact that the contingent interest involved in an attachment action such as that in question is *null and void unless authorized by the Secretary of the Treasury* should not be regarded as preventing such contingent interest from being the basis for an attachment action. An interest which is *null and void unless authorized by the Secretary* is not the same as an interest which is *null and void* unconditionally. Many of the interests which have already been the subject of attachment in the New York courts were also, from a realistic point of view, conditionally null and void. The fundamental issue, as indicated by the decisions in the New York courts, is whether the interest involved may, upon the happening of a certain condition ripen into a vested interest. If this is possible, and the condition is not too unreal, the courts will allow the attachment action. It is believed that the condition that the Secretary of the Treasury may authorize a transfer, if such transfer is in accordance with the policies of the Federal Gov-

ernment, is not too unreal a condition. [pp. 52-53]

The Court of Appeals adopted the Treasury view. It declared, first, that "the words of the Chief Executive of the nation must be taken to have *deprived the defendant of power to transfer any interest* in these blocked accounts except through the medium of assignment subject to a releasing of the credit by the Secretary of the Treasury" (italics added), 288 N. Y. at p. 337, 43 N. E. 2d at p. 347. It then went on to hold that the attachments were nonetheless sufficient to permit an adjudication of the rights of the parties, stating (288 N. Y. at p. 338, 43 N. E. 2d at p. 347):

> The Executive Order did not forbid attachment of the conceded interest of the defendant in the credits upon which the levies were made. For all we know, payment of the blocked accounts to the credit of this action can be permitted consistently with the purpose of the Order. We are not to presuppose that this will inevitably be refused in the event of a judgment for the plaintiff. * * * The lien of an attachment is always hypothetical in some degree. A "seizure subject to license" was, we think, sufficient for the purpose of jurisdiction in rem over the deposits in question.

Three dissenting judges took the position that the "interest" sought to be attached was too "illus-

ory" and that the cause should not be entertained (288 N. Y. at p. 341, 43 N. E. 2d at p. 349). In reaching their respective decisions, however, both the majority and the dissenting judges explicitly determined that, in the face of the Executive Order, neither the attachment nor the judgment of the court could transfer any interest in the funds in the absence of a license.

Petitioners also question the correctness of the Treasury position. They say that under the doctrine of *Pennoyer* v. *Neff*, 95 U. S. 714, a court has no jurisdiction over a nonresident defendant unless there is a valid seizure of his property within the state (see especially Br. in No. 298, p. 48 *et seq.*). It is apparently their view that a "seizure subject to license" could not confer jurisdiction and that any judgment based upon such a "seizure" would suffer from constitutional infirmities. Accordingly they urge that the Treasury's statements that suits might be instituted by attachment should be interpreted (notwithstanding the limiting condition stated) to mean that an attaching creditor required no license in order to acquire a lien interest in blocked property.

To begin with, we do not believe that the doctrine of *Pennoyer* v. *Neff* is so rigid as to compel any such conclusion as that which petitioners assert. The decisions indicate that if there is property of a nonresident within a state and some means whereby the court may assert control over

that property, jurisdictional requirements are satisfied, provided reasonable notice is given. Chief Justice Holmes stated in *Tyler* v. *Judges of the Court of Registration,* 175 Mass. 71, 78, 55 N. E. 812, 815, that "when it is considered how purely formal such an act [seizure] may be, and that even adverse possession is possible without ever coming to the knowledge of a reasonably alert owner, I cannot think that the presence or absence of the form makes a constitutional difference." That there is no requirement of an unconditional or absolute seizure is also emphasized by this Court's decision in *Securities Savings Bank* v. *California,* 263 U. S. 282, which involved an action brought by California against a local bank to have unclaimed deposits declared escheat and transferred to the State. It was held that notice to foreign depositors by publication was sufficient although there had been no actual seizure of the funds. Mere service of the complaint upon the bank was found to meet constitutional requirements. Cf. *Pennington* v. *Fourth National Bank,* 243 U. S. 269. And see also *The Requirement of Seizure in the Exercise of Quasi in Rem Jurisdiction: Pennoyer* v. *Neff Re-examined,* 63 Harv. L. Rev. 657 (1950). It is believed that the New York Court of Appeals was equally justified in holding in the *Polish Relief* case that service of a writ of attachment on a New York bank holding a nonresident's blocked funds was "sufficient for the purpose of jurisdic-

tion" although the "seizure [was] subject to license."[17]

In any event, however, the constitutional requirements with respect to the exercise of jurisdiction *quasi in rem* are not in issue. Whether the Treasury was right or wrong in suggesting that a "seizure subject to license" might be regarded as a sufficient basis, there is no blinking the fact that the regulations did not permit any other kind of "seizure". They plainly state that "an unlicensed attachment * * * cannot operate to transfer or create any interest in blocked property" (Public Circular No. 31, *supra*). The court below correctly

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[17] The courts of some jurisdictions have gone further. Thus, in Wisconsin, it has been held that no seizure of any kind is necessary to confer jurisdiction and that it is sufficient if property is physically located within the State at the commencement of the action and is specifically described in the affidavit upon which the order of publication is based. In *Disconto Gesellschaft* v. *Umbreit*, 127 Wis. 651, 670-671, 106 N. W. 821, 826-827, affirmed on other grounds, 208 U. S. 570, it is stated:

"It has also been held by this court * * * that it is not essential that the property within the state be seized by writ of attachment, but that, if the facts required by the statute to authorize the order for publication appeared by proper affidavit, the court would acquire jurisdiction to render a judgment good at least against the property described in the moving papers, providing it had not been removed from the state or sold to an innocent purchaser before the rendition of the judgment."

See also *Pilger* v. *Sutherland*, 57 F. 2d 604, 607 (C. A. D. C.); *Doerschuck* v. *Mellon*, 55 F. 2d 741 (C. A. D. C.); *Tyler* v. *Judges of the Court of Registration*, *supra*.

determined that petitioners were not authorized to acquire the property interests which they claim.[18]

III

Petitioners argue that the court below failed to give full faith and credit to the New York judgments which they obtained (Br. in No. 298, p. 54 *et seq.*, Br. in No. 314, pp. 31-32). That is a misconception. The issue here is simply whether German-owned property which was frozen as of June 14, 1941, by an exercise of paramount federal power could thereafter *become* subject to disposition by the New York courts without the grant of a federal license. That issue was settled in *Propper* when this Court held, in an identical proceeding brought by the Custodian in the federal courts for a declaration of his rights under a vesting order, that a New York State judgment was ineffective to confer title to blocked property upon a court-appointed receiver, absent a federal license. There can be no question of giving full faith and credit for the simple reason that the New York judgments (which were not *in personam*) never became operative with respect to property theretofore blocked by the President.

Petitioners also urge that the Custodian should have been required to go into the state courts for

[18] The claim of the Sheriff to poundage is not separately treated in this brief since it is clear that his right to fees (other than those which he initially received for the ministerial act of serving the writs) is dependent upon whether liens were obtained by the other petitioners. His petition recognizes this (No. 324, p. 9).

a clarification of his rights. The holdings in *Markham* v. *Allen*, 326 U. S. 490, and *Propper* v. *Clark* are decisive against them.

In *Allen* the Custodian brought suit in the federal courts under Section 17 of the Act to secure an adjudication of his asserted right in a decedent's estate being administered by a state court of probate. Speaking for the Court, Chief Justice Stone declared (326 U. S. at p. 494) that 'while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, * * * it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.'' Addressing himself to the question of discretion, the Chief Justice stated (p. 496):

> Although the district court has jurisdiction of the present case under § 24(1) of the Judicial Code, irrespective of § 17, the latter section plainly indicates that Congress has adopted the policy of permitting the Custodian to proceed in the district courts to enforce his rights under the Act, whether they depend on state or federal law. The cause was therefore within the jurisdiction of the district court, which could appropriately proceed with the case, and the Court of Appeals erroneously ordered its dismissal.

The same objections were also raised in *Propper*. It is to be noted that in that case there was an antecedent question of state law presented, namely, whether Propper's appointment as a *temporary* receiver *prior* to freezing had passed title to him as a matter of New York law.[19] This Court nonetheless held (337 U. S. at p. 493):

> The congressional purpose to put control of foreign assets in the hands of the President through the Custodian, so that there might be a unified national policy in the administration of the Act, argues strongly for federal determination of issues of rights in the blocked assets. Comity does not require abnegation to the extent that a federal court cannot adjudicate rights to the claim involved.[20]

A fortiori, where, as here, there is no disputed issue of state law, the exercise of jurisdiction was entirely appropriate.

IV.

Petitioners assert that the present case is a "test case" which will affect the disposition of a large number of similar cases involving many millions of dollars. We do not dispute that the amounts affected by the decision may be substantial. However, all the outstanding attachments to

[19] It was the appointment as permanent receiver which post-dated the Order.

[20] Cf. *Riehle* v. *Margolies*, 279 U. S. 218, 225-226; *Fischer* v. *American United Insurance Co.*, 314 U. S. 549, 554-555.

which petitioner refers were levied within the State of New York. The files of the Office of Alien Property similarly indicate that the only pending cases involving unlicensed attachments in which that Office is interested arise in the State of New York. There is no reason to assume that the state courts in New York will not respect the adjudication made by the court below. Hence it is extremely unlikely that any conflict will arise which will call for resolution by this Court. The decision below would thus appear to have disposed effectively of the problem and we perceive no necessity for further review by this Court.

CONCLUSION

The issues of law presented are plainly governed by the prior decision of this Court upon which the court below relied. Accordingly, the petitions for writs of certiorari should be denied.

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October, 1950.

APPENDIX

1. Joint Resolution of May 7, 1940, 54 Stat. 179:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction

referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

SEC. 2. Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed.

* * * * * * *

2. Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U. S. C. 1 et seq:

* * * * * * *

Sec. 5, as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App. 5:

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to

any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property, shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and

further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * * * *

SEC. 17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

* * * * * * *

SEC. 34. (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or trans-

fer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1-6 of the Criminal Code (18 U. S. C. 1-6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine

Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be

made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act for return is pending and was instituted prior to the expiration of such one hundred and twenty days.

(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against

the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian.

The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty

days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying

the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payments in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof,

or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided,* That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the orig-

inal debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

3. First War Powers Act, 1941, Title III, c 593, 55 Stat. 838, 840:

* * * * * * * * * *

SEC. 302. All acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury under the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, which would have been authorized if the provisions of this Act and the amendments made by it had been in effect, are hereby approved, ratified, and confirmed.

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4. Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order 8785, June 14, 1941, 6 F. R. 2897:

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do prescribe the following:

SEC. 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of, any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking

institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent, outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coins or bullion or currency, by any person within the United States;

E. All transfers, withdrawals, or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

* * * * * * * * *

SEC. 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

* * * * * * * * *

(j) June 14, 1941—

* * * * * * * * *

Germany

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SEC. 5.

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E. The term "national" shall include,

* * * * * * * * *

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

* * * * * * * * *

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding

credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

* * * * * * * * *

SEC. 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application of license shall be final.

* * * * * * * * *

5. General Ruling No. 12, April 21, 1942, 7 F. R. 2991:

(1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of [Executive Order No. 8389, see General Ruling No. 4, par. (1), *supra*] is null and void to the extent that it is (or was) a transfer of any property in a

blocked account at the time of such transfer; and (b) no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer).

(2) Unless licensed or otherwise authorized by the Secretary of the Treasury, no transfer before the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account unless the person with whom such blocked account is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to the effective date of the Order.

(3) Unless otherwise provided, an appropriate license or other authorization issued by the Secretary of the Treasury before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5 (b) of the Trading with the Enemy Act, as amended, and Order, regulations, instructions and rulings issued thereunder.

(4) Any transfer affected by the Order and/or this general ruling and involved in, or

arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated; *Provided, however,* That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license.

(5) For the purposes of this general ruling:

(a) The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agree-

ment, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power; *Provided, however,* That the term "transfer" shall not be deemed to include transfers by operation of law.

(b) The term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2 (1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

(c) The term "blocked account" shall refer to a blocked account (including safe deposit

box) of a party to the transfer and shall have the meaning prescribed in General Ruling No. 4 except that it shall not be deemed to include an account not treated as a blocked account by the person with whom such account is held or maintained.

(d) The term "effective date of the Order" shall have the meaning prescribed in General Ruling No. 4 except that "the effective date of the Order" as applied to any person whose name appears on The Proclaimed List of Certain Blocked Nationals shall be the date upon which the name of such person first appeared on such list.

(e) The term "transfer by operation of law" shall be deemed only to mean any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status; any transfer to any person by intestate succession; any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession; and any transfer pursuant to (i) Netherlands Royal Decree of May 24, 1940, and (ii) Norwegian Provisional Decree

of April 22, 1940, concerning the monetary system, etc.

(6) Nothing contained in this general ruling shall be deemed to affect in any way criminal liability for violation of the Order, or the regulations, rulings, circulars, or instructions issued thereunder, or in connection therewith, or to otherwise modify any provision thereof.

By direction of the President.

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6. Public Circular No. 31, August 2, 1946, 11 F. R. 8351:

(1) Reference is made to General Ruling No. 12 relating to unlicensed transfers of blocked property. Reference is also made to General Ruling No. 19 relating to the release of Treasury controls over property vested by the Alien Property Custodian. This circular deals with the effect of such release on unlicensed attachments levied with respect to blocked property prior to the vesting thereof by the Custodian.

(2) Under paragraph (1) of General Ruling No. 12, interests in blocked property cannot be acquired, transferred, or created by unlicensed "transfers." Nor may an unlicensed transfer be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(3) An attachment is a "transfer." See paragraph (5) of General Ruling No. 12 where the term "transfer" is defined as including "the issuance, docketing, filing, or other levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment." An unlicensed attachment, therefore, cannot operate to transfer or create any interest in blocked property. Nor can it serve as a basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(4) Paragraph (4) of General Ruling No. 12 does not constitute a license authorizing the seizure or creation of any interest in blocked property by attachment proceedings or other legal process. This paragraph merely is a formal statement of the position which the Treasury Department has always taken with respect to litigation affecting blocked property—that it does not desire to interfere with such litigation so long as it is clearly understood that the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property. Thus, the proviso of paragraph (4) specifies that "no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power,

or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license." In issuing paragraph (4), the Treasury Department did not undertake to decide for the courts whether they should exercise jurisdiction. It simply prescribed that jurisdiction could be exercised only on the basis that if a Treasury license was not issued, the judicial process could not operate to transfer or create any interest in blocked property, nor could it be the basis for the assertion or recognition of any other right, remedy, power, or privilege with respect to the property.

(5) The Treasury Department has always considered that when the Alien Property Custodian has vested any property, it would not be in the national interest for the Treasury Department thereafter to grant licenses authorizing the creation or acquisition of any interest in the property. Formerly it was the practice of the Department, whenever it was notified by the Custodian that a particular property had been vested, to issue a specific release to the Custodian of all control of the property under Executive Orders Nos. 8389 and 9193. Paragraph (1) of General Ruling No. 19 constitutes a general release of such

control in the case of all German and Japanese property vested by the Custodian. Paragraph (2) of the General Ruling is intended to make it clear that a release of control over any vested property to the Alien Property Custodian, whether by specific release or by reason of the General Ruling, operates as a final denial by the Secretary of the Treasury of any pending application for license or other authorization relating to such property and that no application for a license authorizing the creation, acquisition, or transfer of any interest in such property will thereafter be entertained or granted. The paragraph is thus a formal statement of what has always been the position of the Treasury Department—namely, that once blocked property has been vested by the Custodian, there is no longer any possibility that an unlicensed attachment may ripen through the issuance of a Treasury license into a seizure and acquisition of an interest in such blocked property.

(6) In view of the fact that the Alien Property Custodian has publicly announced his intention of vesting all German and Japanese property in the United States, it will be the general policy of the Treasury Department not to grant any licenses authorizing the creation or acquisition through legal process of any interest in blocked German or Japanese property.

7. Press Release No. 34, April 21, 1942, *United States Treasury Department: Documents Pertaining to Foreign Funds Control* (1946), pp. 71-73:

> The Treasury Department, in a formal statement issued today, called attention to the fact that all unlicensed transfer of blocked assets in the United States are void and unenforceable.
>
> General Ruling No. 12, issued by the Secretary of the Treasury, makes clear that unlicensed transfers of blocked assets in violation of the freezing orders, and transfers designed or having the effect of evading such orders, always have been void and unenforceable.
>
> Secretary Morgenthau, commenting on today's general ruling, pointed out that these unlicensed transfers of blocked assets always have been void and unenforceable under the freezing orders and that today's ruling serves the purpose of emphasizing this fact for the benefit of any of the public who may have overlooked this aspect of freezing control.
>
> He also called attention to the provisions of the ruling, making it possible for persons who have been parties to unlicensed transfers of blocked assets to file applications for licenses to validate these transfers.
>
> "The Treasury, of course, wants to be reasonable about this matter," he stated. "We do not propose to allow our regulations, intended

for the protection of our country and the United Nations, to become an instrumentality for defeating their interests or producing unconscionable advantages or unreasonable hardships. These matters can be dealt with by licenses, without undue interference with the purposes of freezing control."

Treasury officials pointed out that there are more than 7 billion dollars in blocked assets in the United States. The Government's policy on this matter, as reflected in today's formal ruling, has nullified attempts by the Axis to gain title to the billions of dollars in assets belonging to nationals of the countries overrun by the Axis. It has defeated efforts of the Axis to wrest control of such assets away from their lawful owners and hold them in the hopes that in the postwar period it will be possible to realize on such assets if freezing restrictions are lifted. Of equal significance is the fact that it has destroyed any possible black market in neutral countries for blocked assets—one of the ways the Axis would like to be able to obtain the foreign credit necessary to finance imports from neutral countries into Axis territory and also one of the ways the Axis would like to be able to gain the funds necessary to subsidize espionage, sabotage, and fifth-column activities in the United Nations, Latin America, and elsewhere.

Treasury officials explained that, based on the evidence of what the Axis was doing with assets of the overrun countries within their physical control, Axis efforts in an operation of this character would follow no single pattern. Rather, they would run the gamut from outright duress—assignments at the point of a gun or with the Gestapo as "witnesses"—through to the more subtle "legal" transfers—the purchase of such blocked assets against payment in local currency obtained as occupation costs or by forced loan from banking institutions in the occupied areas. In these latter cases the point of the gun would not be leveled at the individual, but would be leveled at the central bank and "Quisling" governments who would provide the credit for the Axis to "buy" their country's birthright.

The net effect of such transfers would not vary however, they would be intended to mulct the overrun countries of the very life-blood of any postwar reconstruction, namely, the foreign exchange needed to obtain the goods and services necessary for rebuilding the economies of these countries. Axis war psychology would be benefited also—by depriving the holders of their title to these assets the Axis would encourage a spirit of defeatism and a willingness to succumb to the German "new order."

Officials also explained that, based on the operation of the neutral black market in looted assets physically in the control of the Axis, it was easy to anticipate the type of black market the enemy might try to foster for "blocked assets." This neutral blackmarket operation would be designed to give the Axis immediate returns on blocked assets even though the Axis could not get such assets out from under our freezing regulations. In this case the assets would be assigned or otherwise transferred to neutral speculators at heavy discount in order that the Axis could obtain credit now to buy goods and services in neutral countries and thus assist the war effort. Of course some of these blackmarket operations would be for the obvious purpose of lining the pockets of Axis officialdom as insurance against the day when the Axis is crushed. Neutral speculators would either hold such assignments with the intent of salvaging on them after the war or in the hope of being able to squeeze the blocked assets through the freezing control by one trick or another.

As was pointed out, since freezing control makes null and void, or unenforceable all transfers with respect to blocked assets unless licensed by the Secretary of the Treasury, Axis attempts to gain title to these assets are frustrated and the true owner's interests are

protected and he continues to have a valuable stake in a victory by the United Nations.

Commenting upon today's ruling, Secretary Morgenthau stated: "This Government served notice on the world when we froze the assets of Norway and Denmark on April 10, 1940, that we did not intend to permit the Axis to realize any use or benefit from Norwegian and Danish assets in the United States. Since that time we have consistently pursued this policy with respect to every country falling under the Axis yoke. The policy of this Government always has been unequivocal. We will not allow the Axis, directly or indirectly, to gain any interest in the 7 billion dollars in blocked assets in this country. Neither those funds nor any interest in them will be used against the United Nations by the Axis. Neither will they be used as a part of Germany's economic 'new order' in Europe or Japan's 'co-prosperity sphere' in the Pacific."

It was emphasized that, while freezing control attempted to interfere as little as possible with normal legitimate commercial transactions, still the Government was combatting a menace of sweeping proportions and was compelled to block all corrosive efforts of infiltration through loopholes. Freezing control and the Government's policy is therefore comprehensive and the licensing technique must be freely used to prevent hardship in legitimate

cases. Thus, under the freezing orders, more than 80 general licenses have been issued, permitting vast categories of transactions under appropriate safeguards without even filing an application. In addition, more than 400,000 specific licenses also have been issued.

Paragraph (1) of today's general ruling deals with unlicensed transfers made after the effective date of the freezing orders involving property in blocked accounts. If any such transfer was made after the account was actually blocked, then the transfer is null and void unless licensed. Thus, if a bank blocked the account of a national of Denmark on April 10, 1940, and on June 10, 1940, the national attempted to assign title to the account to a German, the transfer would be null and void unless the Treasury licensed it. On the other hand, if a transfer were made before the account was actually blocked, but attempt was made to enforce it while the account was in fact blocked, the transfer would be unenforceable. By way of example: On July 15, 1941, John Doe, resident in Argentina, assigned his account with an American bank to Richard Roe in the United States. On September 15, 1941, the Treasury instructed the bank to block the account of John Doe as a national of Rumania. After September 15, 1941, the assignment would be unenforceable against John

Doe's blocked account unless the transfer were licensed by the Treasury Department.

Paragraph (2) of the general ruling deals with transfers alleged to have been made before the effective date of the freezing orders but involving accounts thereafter blocked. These transfers are unenforceable against blocked accounts unless the person with whom the blocked account was held or maintained had written notice of the transfer or had recognized it in writing prior to the effective date of the Order. Thus, if in the example above, the national of Denmark had assigned the bank account to the German in 1937 and the bank was not notified of the assignment until June 10, 1940, the assignment would be unenforceable against the blocked account unless licensed. If, on the other hand, the bank was notified in writing of the assignment before April 10, 1940, then the assignment is enforceable against the blocked account (but, of course, payment from the blocked account could only be made pursuant to Treasury license).

Treasury officials pointed out that the policy behind paragraph (2) of the general ruling was understandable. If the general ruling had been merely prospective in operation, it would be easy for Axis agents to validate transfers obtained under duress by the subterfuge of dating them prior to the effective date

of the Executive Order. This would, of course, defeat one of the major purposes of freezing control. Officials pointed out that in those cases where notice of the transfer was given to the person maintaining the account in this country and where the transfer had been accepted by that person as valid, the provisions of the general ruling are inapplicable since under those circumstances the notice is an adequate precaution to guarantee that the transfer was made prior to the effective date of freezing control.

Paragraph (3) of the ruling provides that a license issued by the Treasury Department, either before or after a transfer, completely validates the transfer for the purposes of freezing control. Of course, if an assignment would have been invalid without freezing control (e.g., because not properly executed), a Treasury license does not purport to remedy this type of invalidity.

Paragraph (4) is but a formal statement of the position which the Treasury Department has always taken on litigation (including attachments) affecting blocked assets. The Treasury has no desire to limit the bringing of suits in courts within the United States: *Provided*, That no greater interest is created by virtue of the attachment, judgment, etc., than the owner of the blocked account could have voluntarily conferred without a license. Thus,

the Treasury does not want to interfere with the orderly consideration of cases by the courts provided that the results of court proceedings are subject to the same policy consideration from the point of view of freezing control as those arising through voluntary action of the parties.

Paragraph (5) defines various terms employed in the ruling. For example: the term "transfer" is given a very comprehensive meaning, excepting only certain types of transfers by operation of law (e.g., transfer by intestate succession). The term "property" is broad but by and large does not include mere chattels or real property. The term "blocked account" is in effect limited to accounts actually treated as blocked accounts by the person with whom such account is held or maintained.

Paragraph (6) is technical in character and reserves the full right of the Government to prosecute for violations of the freezing orders and emphasizes that General Ruling No. 12 is not intended to modify outstanding freezing orders, regulations, etc.

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